

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JULIA URQUIDI)	
Claimant)	
VS.)	
)	
TRINITY MANOR ADULT CARE HOME)	Docket No. 186,568
Respondent)	
AND)	
)	
KANSAS ASSOC. OF HOMES OF THE AGING)	
Insurance Carrier)	

ORDER

Claimant appeals from an Order entered by Administrative Law Judge Kenneth S. Johnson on July 7, 1997.

APPEARANCES

Claimant appeared by and through her attorney, Diane F. Barger of Wichita, Kansas. Respondent and its insurance carrier appeared by and through their attorney, D. Shane Bangerter of Dodge City, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The record consisted of a Transcript of Proceedings before Administrative Law Judge Kenneth S. Johnson in Garden City, Finney County, Kansas, on the 24th day of June 1997.

ISSUES

The sole issue raised by the claimant is whether the Administrative Law Judge erred when he granted respondent's motion to quash the deposition of polygraph expert, Gary Davis.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the briefs of the parties, the Appeals Board finds as follows:

Before the Appeals Board discusses the merits of this appeal, it will first address the issue as to whether it has jurisdiction to review the Order that is the subject of this appeal.

This is not an appeal from an order entered pursuant to the preliminary hearing statute found at K.S.A. 44-534a, as amended. An appeal from the preliminary hearing statute either must allege that the Administrative Law Judge exceeded his or her jurisdiction or one of the jurisdictional issues listed in K.S.A. 44-534a, as amended, must be raised. This appeal is the result of a hearing held prior to award on a motion filed by the respondent to quash a deposition scheduled by the claimant. For the Appeals Board to have jurisdiction at this juncture of the proceeding to review the subject Order, the appeal would have to be brought pursuant to K.S.A. 44-551(b)(1), as amended.

The 1997 Kansas Legislature amended K.S.A. 1996 Supp. 44-551(b)(1). Effective July 1, 1997, the amendment changed the review of the Appeals Board from "[a]ll acts, findings, awards, decisions, rulings or modifications of findings or awards made by an administrative law judge" to review of "[a]ll final orders, awards, modification of awards, or preliminary hearing awards under K.S.A. 44-534a and amendments thereto made by an administrative law judge."

The Appeals Board finds that the Order entered by Administrative Law Judge Kenneth S. Johnson on July 7, 1997, is not a final order, award, modification of award, or a preliminary hearing award as contemplated by K.S.A. 44-551(b)(1), as amended. The Appeals Board concludes that the subject Order that granted respondent's motion to quash deposition is an interlocutory order made by the Administrative Law Judge during the litigation of a workers compensation case. It is an order that the Administrative Law Judge has the authority to make during the trial process and the Appeals Board lacks jurisdiction to review such order until it is contained in a final order or award.

The Appeals Board acknowledges that K.S.A. 1996 Supp. 44-551(b)(1) in effect before July 1, 1997, and as construed by the Kansas Court of Appeals in Shain v. Boeing Military Airplanes, 22 Kan. App. 2d 913, 924 P.2d 1280 (1996), would have required the Appeals Board to review this Order. However, the Appeals Board finds that since the

Order and written request for appeal were filed with the Appeals Board after July 1, 1997, the Appeals Board does not have jurisdiction to review the Order at this juncture of the proceeding. See Bowen v. Wilson, 93 Kan. 351, Syl. ¶ 2, 144 P.2d 251 (1914).

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that claimant's appeal from the Order entered by Administrative Law Judge Kenneth S. Johnson dated July 7, 1997, should be, and is hereby, dismissed.

IT IS SO ORDERED.

Dated this ____ day of October 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Diane F. Barger, Wichita, KS
D. Shane Bangerter, Dodge City, KS
Kenneth S. Johnson, Administrative Law Judge
Philip S. Harness, Director